IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

THE ESTATE OF DONALD ELMO HUTCHISON,

Respondent,

and

GEORGE MASSOOD, INTERSTATE SIGNS, INC., and LYNN OAK COURT COMPANY, L.P.,

Appellants,

v.

LESTER G. MASSOOD,

Respondent.

DOCKET NUMBER WD78826

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: June 28, 2016

APPEAL FROM

The Circuit Court of Jackson County, Missouri
The Honorable Marco A. Roldan, Judge

JUDGES

Division Two: Victor C. Howard, P.J., and Thomas H. Newton and Karen King Mitchell, JJ.

ATTORNEYS

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MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT

THE ESTATE OF DONALD ELMO HUTCHISON,	)	
Respondent,	)	
and	)	
GEORGE MASSOOD, INTERSTATE SIGNS, INC., and LYNN OAK COURT COMPANY, L.P.,	)	**OPINION FILED: June 28, 2016**
Appellants,	)	
v.	)	
LESTER G. MASSOOD,	)	
Respondent.	)	

WD78826 Jackson County

Before Division Two Judges: Victor C. Howard, Presiding Judge, and Thomas H. Newton and Karen King Mitchell, Judges

George Massood, Interstate Signs, Inc., and Lynn Oak Court Company, L.P. ("Intervenors"), appeal the trial court's judgment ordering the trustees of the Donald E. Hutchison Trust ("the Trust") and the Estate of Donald Hutchison ("the Estate") to transfer all of their interest in Interstate Sign and Lynn Oak to Lester Massood. Intervenors argue that the trial court inappropriately combined the preliminary injunction hearing with a trial on the merits by entering a final judgment on the merits, including granting permanent injunctive relief, without providing notice that the trial would be combined with the injunction hearing.

REVERSED AND REMANDED.

Division Two holds:

1. A settlement agreement is a contract. While parties in a lawsuit are allowed to settle any and all issues between them, a contract generally binds no one but the parties thereto, and it cannot impose any contractual obligation or liability on one not a party to it. Intervenors were not parties to the settlement agreement between Massood, the Estate, and the Trust. In entering judgment consistent with the settlement agreement, the trial court could not properly resolve Intervenors' petition for declaratory judgment.

2. The record shows that the Intervenors' petition for declaratory judgment was filed contemporaneously with their motion to intervene, which is all that is required. The motion to intervene shall state the grounds therefore, and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. Rule 52.12(c) does not require separateness, only that the pleading accompany the motion. Intervenors, therefore, had pending claims for relief in the case.

3. In a proceeding involving a request for preliminary injunctive relief, the trial court may, at any time, order the trial of the action on the merits to be advanced and consolidated with the hearing of the application for a preliminary injunction. Moreover, any evidence received upon an application for a preliminary injunction admissible at the trial on the merits becomes part of the trial record and need not be repeated at the trial.

4. But an order accelerating the trial on the merits and consolidating it with the preliminary injunction hearing must be clear and unambiguous. And the order consolidating the preliminary injunction hearing with the trial on the merits must be given in sufficient time to afford a litigant a reasonable opportunity to marshal and present its evidence. Absent such order, a trial court may not adjudicate the merits of a claim for a permanent relief on the evidence presented at a hearing on an application for a preliminary injunction unless the parties so agree.

5. A request for preliminary injunctive relief is available only to preserve the status quo and prevent irreparable injury to the plaintiff pending the disposition of a case on its merits. One of the parties sought, and the trial court ordered, the Trust to immediately release all shares of stock in Interstate Signs, Inc. and any interest in Lynn Oak to Lester Massood. This is permanent relief. Thus, claims for permanent relief were pending before the trial court, and they were resolved by the court's judgment following the preliminary injunction hearing.

6. The record also shows that the trial court did not explicitly communicate to Intervenors its intent to resolve claims for permanent relief based on the evidence presented at the preliminary injunction hearing. The court never stated clearly or unambiguously what issues were to be resolved at the hearing. The only express statements from the court were its acknowledgement that the hearing was to address the preliminary injunction and that it did not intend to approve the parties' settlement. At most, the court's comments and actions suggested that it would allow Massood to put on evidence of the settlement, which, the court itself noted, "still leaves open the permanent injunction, if any." It was

not clear that this evidence would have any effect beyond the decision of whether to grant or deny the relief sought in the petition for preliminary injunction (transfer of any business assets held in the trust), or that Intervenors would be deprived of any opportunity to provide evidence of their own should they choose not to do so at that hearing.

7. Intervenors also did not consent to combining the preliminary injunction hearing with the trial on the merits. Counsel for Intervenors began the pre-hearing discussions by stating, "it's my understanding that this was noticed up for the hearing on the preliminary injunction and not the underlying case." The court confirmed that the ultimate trial was set at a future date and that it was the preliminary injunction hearing that was set for trial that day. The discussion then turned to Massood's plan to put on evidence of a settlement between himself, the Trust, and the Estate. Noting that the matter was set for only a preliminary injunction, Intervenors "object[ed] to any effort to circumvent that process through some settlement agreement which obviously isn't binding upon us." There is nothing in this exchange that indicates the Intervenors agreed to the entire case being tried on the merits at the preliminary injunction hearing.

8. A party's decision to exercise its right to appeal—as opposed to filing an extraordinary writ—is not the same as consenting to the consolidation of the preliminary injunction hearing with the trial. An extraordinary writ is, by its nature, very difficult to obtain, and a party has a right to appeal from an adverse judgment.

9. It is also not the case that, because Intervenors received a full hearing at which they were allowed to present evidence, cross-examine Massood, and offer a number of their own exhibits, they were therefore not prejudiced. This argument has been rejected a number of times. Because of the substantial procedural differences between the interlocutory preliminary injunctions and judgments on the merits, a hearing on a motion for preliminary injunction simply is not a substitute for the trial on the merits.

10. First, the elements necessary to establish a right to preliminary and permanent injunctive relief are fundamentally different. Issuance of a preliminary injunction depends in large part on an assessment of the movant's likelihood of success, and the threat of irreparable harm if injunctive relief is not granted pending a final resolution of the case. By contrast, at the permanent injunction stage, the trial court must finally determine the merits of the claims—not merely the probability of prevailing—and weigh the harm caused by an order that permanently prohibits or requires a particular action.

11. Second, Intervenors may have chosen not to present the entirety of their case at the preliminary injunction hearing for any number of reasons: due to inadequate time to prepare; to limit their litigation expenses; or for strategic reasons. The fact that the trial court was not persuaded by the Intervenors' presentation at the preliminary injunction hearing does not foreclose the possibility that they would prevail after a full trial.

12. For a number of reasons, an opposing party's proposed judgment, filed after the conclusion of the hearing, cannot serve as notice that the preliminary injunction hearing

and trial on the merits will be combined. First, a party's opinion of the nature of the proceeding is not the same as a clear statement from the trial court that there will be consolidation. Second, while there is no set time that the notice must be given, it must come with sufficient time for the parties to prepare their cases for the hearing. Notice coming after the presentation of evidence cannot meet this standard.

Opinion by: Karen King Mitchell, Judge June 28, 2016

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